1	Mark L. Javitch (CA SBN 323729)				
2	Javitch Law Office 480 S. Ellsworth Ave San Mateo, CA 94401 Telephone: 650, 781, 8000				
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4	Telephone: 650-781-8000 Facsimile: 650-648-0705				
5	mark@javitchlawoffice.com Plaintiff/Attorney				
6	UNITED STATES	DISTRICT COURT			
7	NORTHERN DISTRICT OF CALIFORNIA				
8	SAN FRANCISCO DIVISION				
9					
10	MARK L. JAVITCH,) Case Number: <u>3:19-cv-05419</u>			
11	Plaintiff,))			
12) <u>COMPLAINT</u>			
13	VS.) JURY TRIAL DEMANDED			
14	WEB LISTING EXPERTS LLC, a Florida limited liability company, WEB LISTING))			
15	EXPERTS LLC, a Delaware limited liability company, BROADLEAF MARKETING &)			
16	SEO, LLC)			
17	Defendants.))			
18		-			
19	Plaintiff MARK L. JAVITCH ("Plaint	iff") brings this Complaint and Demand for Jury			
20	Trial against Defendant WEB LISTING EXPERTS LLC (Florida), Defendant WEB LISTING				
21	EXPERTS LLC (Delaware), and Defendant	BROADLEAF MARKETING & SEO, LLC			
22	("Defendants"), to stop placing calls to Plaintiff's cellular telephone and to obtain redress as				
23	authorized by statute.				
24					
25	NATURE OF	THE ACTION			
26	Defendants sell services placing listings on Google and other search engines.				
27	As a part of marketing their products and serv	rices, Defendants and their agents placed calls to			
28		. .			
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Plaintiff's cell phone. When Plaintiff answered, Defendants played Plaintiff a prerecorded voice message.

- 2. Unfortunately, Defendants did not obtain consent from Plaintiff prior to calling his cell phone, and Defendants is therefore liable under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA").
- 3. Congress enacted the TCPA in 1991 to restrict the use of sophisticated telemarketing equipment that could target millions of consumers *en masse*. Congress found that these calls were not only a nuisance and an invasion of privacy to consumers specifically but were also a threat to interstate commerce generally. *See* S. Rep. No. 102-178, at 2-3 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1969-71.
- 4. The TCPA targets unauthorized calls exactly like the one alleged in this case, based on Defendants' use of technological equipment to send advertisements to people on a mass scale without his consent.
- 5. By placing the call at issue, Defendants violated the privacy of Plaintiff and caused him to suffer statutory damages.
- 6. Plaintiff therefore seeks an injunction requiring Defendants to stop calling his cell phone, as well as an award of actual and statutory damages, civil penalties, costs and reasonable attorneys' fees.

PARTIES

- 7. Plaintiff MARK L. JAVITCH is a natural person and is a citizen of the Northern District of California.
- 8. Defendant WEB LISTING EXPERTS LLC is a limited liability company organized and existing under the laws of the state of Florida, with its principal place of business in Palm Beach County, Florida at 811 Lucerne Ave, Lake Worth, Florida, 33460.
- 9. Defendant WEB LISTING EXPERTS LLC is a limited liability company organized and existing under the laws of the state of Delaware, with its principal place of business in Palm Beach County, Florida at 811 Lucerne Ave, Lake Worth, Florida, 33460.

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10. Defendant BROADLEAF MARKETING & SEO, LLC is a limited liability company organized and existing under the laws of the state of Florida, with its principal place of business in Palm Beach County, Florida at 811 Lucerne Ave, Lake Worth, Florida, 33460.

JURISDICTION AND VENUE

- 11. This Court has federal subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227, which is a federal statute.
- 12. This Court has supplemental jurisdiction over all Plaintiff's California and common law claims under 28 U.S.C. § 1367(a) because they are so related to the TCPA claims in this action that arise under the Court's original jurisdiction that they form part of the same case or controversy.
- 13. This Court has personal jurisdiction over Defendants because it targeted its sales efforts towards Plaintiff in this District and in the State of California and because the events giving rise to this lawsuit occurred in this District.
- 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendants regularly conducts business in the State of California and in this District, and because the wrongful conduct giving rise to this case occurred in this District.

FACTS

- 15. On August 27, 2019, Plaintiff received a call from Defendants at 8:19 a.m. on his cell phone number ending in 5544.
 - 16. The Caller ID displayed as +1 (402) 204-3992.
- 17. The Caller ID displayed a "spoofed" or falsified caller ID number in a Nebraska area code, even though Defendantss were located in Florida.
 - 18. When Plaintiff answered the call, he heard a prerecorded voice message.

19.	The prerecorded voice said that Plaintiff's Google listing was unclaimed and to			
"press one" to resolve the issue.				
20.	Plaintiff pressed one and was then connected with a live telemarketing agent.			
21.	The agent offered to place a listing on Google.			
22.	Plaintiff discussed purchasing Defendants listing service.			
23.	Defendants emailed Plaintiff an invoice from <u>billing@weblistingsolutions.com</u> .			
24.	Plaintiff received a receipt from WEB LISTING SOLUTIONS.			
25.	Upon information and belief, Defendants operate the website			
weblistingsolutions.com.				
	FIRST CAUSE OF ACTION Willful and/or Knowing Violation of 47 U.S.C. § 227 Telephone Consumer Protection Act of 1991 Against all Defendants			
26.	Plaintiff incorporates the foregoing allegations as if fully set forth herein.			
27.	Defendants and/or its agents placed at least one telephone call to Plaintiff's			
cellular telepl	cellular telephone.			
28.	Plaintiff never consented to receive calls from Defendants. Plaintiff has no			
relationship v	vith Defendants.			
29.	Defendants's call was made for the purpose of marketing and advertising,			
constituting c	commercial advertising and telemarketing as contemplated by the TCPA.			
30.	Defendants played a prerecorded voice message to Plaintiff's cell phone as			
proscribed by 47 U.S.C. § 227(b)(1)(A)(iii).				
31.	As a result of its unlawful conduct, Defendants invaded Plaintiff's personal			
privacy, causing him to suffer damages and, under 47 U.S.C. § 227(b)(3)(B), entitling Plaintiff				
to recover \$500 in civil penalties for each violation and an injunction requiring Defendants to				
stop its illegal calling.				
32.	Not only did Defendants make these violating calls, Defendants and/or its			
agents did so "knowingly" and/or "willfully" under 47 U.S.C. § 227(b)(3)(C).				

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COMPLAINT

1	33.	If the court finds that Defendants willfully or knowingly violated this	
2	subsection, the court may exercise its discretion to increase the amount of the award from \$500		
3	to \$1500 per violation under 47 U.S.C. § 227(b)(3)(C).		
4		GEGOND GANGE OF A CENON	
5		SECOND CAUSE OF ACTION Violation of Cal. Civ. Code §1770(a)(22)(A)	
6	California Consumers Legal Remedies Act Against all Defendants		
7		(Injunctive Relief under §1780)	
8	34.	Plaintiff incorporates the foregoing allegations as if fully set forth herein.	
9	35.	Cal. Civ. Code §1750, et seq., California's Consumer Legal Remedies Act,	
10	prohibits a specific list of 27 unfair business practices.		
11	36.	Cal. Civ. Code §1770(a)(22)(A) prohibits "[d]isseminating an unsolicited	
12	prerecorded message by telephone without an unrecorded, natural voice first informing the		
13	person answering the telephone of the name of the caller or the organization being represented.		
14	the address or the telephone number of the caller, and without first obtaining the consent of that		
15	person to liste	n to the prerecorded message."	
16	37.	By playing a prerecorded voice message to Plaintiff's cell phone without first	
17	asking for h	is consent with a natural voice, Defendants has violated Cal. Civ. Code	
18	§1770(a)(22)(A).	
19	38.	Consumers who suffer damage due to an unlawful business practice may bring	
20	an action to enjoin a corporation's unlawful business practices throughout the state on behalf of		
21	the general pu	blic.	
22	39.	Plaintiff is entitled to injunctive relief under Cal. Civ. Code §1780(a).	
23			
24		PRAYER FOR RELIEF	
25	40.	WHEREFORE, Plaintiff Mark L. Javitch prays for the following relief:	
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27		a) An injunction requiring Defendants to cease all calls to Plaintiff;	
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1	b) An order declaring that Defendants' actions, as set out above, violate the	
2	TCPA;	
3	c) An order declaring that Defendants' actions, as set out above, knowingly and	
4	willfully violate the TCPA;	
5	d) An order declaring that Defendants' actions, as set out above, violate the	
6	California's Consumers Legal Remedies Act §1770(a)(22)(A);	
7	e) An award of actual and/or statutory damages and civil penalties;	
8	f) An award of reasonable attorneys' fees and costs; and	
9	g) Such other and further relief that the Court deems reasonable and just.	
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11	JURY DEMAND	
12	Plaintiff requests a trial by jury of all claims that can be so tried.	
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14	Dated: August 28, 2019	
15	Respectfully submitted,	
16		
17	MARK L. JAVITCH	
18	By: /s/ Mark L. Javitch .	
19	Mark L. Javitch (SBN 323729) Javitch Law Office	
20	480 S. Ellsworth Ave San Mateo CA 94401	
21	Tel: 650-781-8000	
22	Fax: 650-648-0705 Plaintiff/Attorney	
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28	COMPLABIT	
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1		Cal. Civ. Code 1780(d) Affidavit
2		
3	1.	Plaintiff resides in San Mateo County, California.
4	2.	The nearest court where Plaintiff's TCPA and CLRA claims could both be
5		heard is the Northern District of California in San Francisco, California.
6	3.	Therefore, this court is the proper place for the trial of the action.
7	4.	I declare that the foregoing is true and correct under the laws of the State of
8		California and the United States of America.
9		
10	DATED: Au	agust 27, 2019
11		Respectfully submitted,
12		MARK L. JAVITCH
13		
14		By: /s/ Mark L. Javitch .
15		Attorney / Plaintiff
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